

Robert S. Besser (SBN 46541)  
Christopher Chapin (SBN 112608)  
LAW OFFICES OF ROBERT S. BESSER  
1221 Second Street, Suite 300  
Santa Monica, California 90401  
TEL: (310) 394-6611  
Fax: (310) 394-6613  
rsbesser@aol.com  
christopherchapin@aol.com

Attorneys for Defendant  
CBS STUDIOS INC.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DELRAY RICHARDSON p/k/a DELRAY  
d/b/a DEL FUNK BOY MUSIC, an  
individual, and STERLING A.  
SYNDER d/b/a/ ZION RECORDS,  
an individual,

Plaintiffs,  
vs.

CBS STUDIOS INC., d/b/a CBS  
TELEVISION DISTRIBUTION, a  
division of CBS CORPORATION,  
a Delaware corporation,

Defendants.

Case No. CV12-7925 ABC (SHx)  
Honorable Audrey B. Collins

REPLY TO PLAINTIFFS'  
RESPONSE TO DEFENDANT'S  
"UNDISPUTED MATERIAL FACTS"  
-and-

SEPARATE STATEMENT OF  
"UNDISPUTED FACTS" IN  
OPPOSITION TO DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT

Date: September 30, 2013  
Time: 10:00 a.m.  
Ct rm: 680  
Roybal Building

1 DEFENDANT'S REPLY TO  
2 PLAINTIFFS' RESPONSE TO DEFENDANT'S UNDISPUTED MATERIAL FACTS  
3 Undisputed Fact No. 1

4 "Jean-Yves Ducornet ("Jeeve") is a composer and a one-half  
5 owner of the copyrights which Plaintiffs alleged have been  
6 infringed."

7 Defendant's Reply to Plaintiffs' Response

8 Plaintiffs have agreed that this is UNDISPUTED.

9 Plaintiffs go on with a lengthy "however" argument which  
10 does not refer to any proof of a dispute with respect to this  
11 fact. Nor does it take away from their *agreement* with  
12 Defendant's Undisputed Fact No. 1.

13 The argument offered in support of Plaintiffs' statements  
14 regarding Undisputed Fact No. 1 is merely opinion with no  
15 citations to evidence.

16 Their "supporting evidence" is not authenticated, immaterial  
17 and contains improper legal argument.

18 Undisputed Fact No. 2

19 "At all relevant times, PEN Music Group, Inc. ("PEN") had  
20 the right to provide non-exclusive licenses of any or all of  
21 Jeeve's works (including those of which he is a co-owner) to  
22 third parties for uses in all media."

1           Defendant's Reply to Plaintiffs' Response

2           Plaintiffs dispute this fact, but their reason is non-  
3 responsive and their supporting evidence inadmissible.<sup>1</sup> Further,  
4 Plaintiffs offer no evidence that contradicts the fact that PEN  
5 administered Jeeves catalogue of works.

6           Undisputed Fact No. 3

7           "Pursuant to his administration agreement with PEN, Jeeve  
8 delivered certain of his musical works (created either alone or  
9 with Richardson to PEN and PEN in turn delivered each of the  
10 works to Anisa Productions, Inc. (formerly known as Supermodel,  
11 Inc.), the producer of a television show entitled 'America's Next  
12 Top Model' for review and decision about which and how much they  
13 wanted to use."

14           Defendant's Reply to Plaintiffs' Response

15           Plaintiffs dispute this fact on the basis that they "have  
16 never see [sic] any administration agreement." This is clearly  
17 insufficient to create a triable issue, nor does it even address  
18 the substance of the Undisputed Fact. Their supporting evidence  
19 is inadmissible as discussed more fully in Defendant's Objections  
20 and Motion to Strike Declaration of Delray Richardson ("Def.'s  
21 Obj. to Richardson Decl.")

22  
23  
24           <sup>1</sup> For this and all other references to evidentiary legal  
25 arguments, please refer to Defendant's Objections and Motion to  
26 Strike the Declaration of Delray Richardson.

1           Undisputed Fact No. 4

2           "The producers of ANTM would select tracks that they wanted  
3 to use in ANTM and PEN would issue licenses for those tracks."

4           Defendant's Reply to Plaintiffs' Response

5           Again, Plaintiffs' denial has nothing to do with the basic  
6 fact at issue-the procedure used by PEN to license music for use  
7 in ANTM. Plaintiffs have failed to assert any facts or evidence  
8 that would dispute this fact.

9           Undisputed Fact No. 5

10          "Richardson has admitted that the only possible source of  
11 any of the Plaintiffs' Works that appeared in ANTM was PEN."

12          Defendant's Reply to Plaintiffs' Response

13          Plaintiffs dispute this fact, but ignore that Richardson  
14 testified at his deposition that the only source of the music he  
15 heard being played on television would have been from PEN. See  
16 Deposition of Delray Richardson, p. 40, l. 15 through p. 41, l.  
17 24. Further, Plaintiffs offer no evidence that the music could  
18 have been from any other source.

19          Undisputed Fact No. 6

20          "Plaintiffs do not claim that any of Plaintiffs' Works were  
21 secured by the ANTM producer from any other source."

22          Plaintiffs Response

23          Plaintiffs dispute this fact but offer a non-responsive  
24 reason and inadmissible evidence. Again, no evidence of any  
25

1 other possible source is offered

2 Undisputed Fact No. 7

3 Ultimately, CBS received the copyrights to all episodes of  
4 ANTM, including rights to the music used therein, from the  
5 producer.

6 Defendant's Reply to Plaintiffs' Response

7 This is another non-responsive denial based on inadmissible  
8 evidence.

9 Undisputed Fact No. 8

10 "After Jeeve created each of the musical compositions at  
11 issue, he gave them to Richardson without titles with the idea  
12 that Richardson would add additional material."

13 Defendant's Reply to Plaintiffs' Response

14 "Plaintiff [sic] denies all truthfulness of this statement."

15 This statement, followed by unsworn "testimony" by  
16 Richardson is clearly ineffective at creating an issue of  
17 material fact. *S.A. Empresa de Viacao Aerea Rio Grandense v.*  
18 *Walter Kidde & Co., Inc.*, 690 F. 2d 1235, 1238 (9<sup>th</sup> Cir. 1982)

19 Undisputed Fact No. 9

20 "Richardson then assigned his own titles to the tracks  
21 without Jeeve or PEN's knowledge."

22 Defendant's Reply to Plaintiffs' Response

23 "Plaintiff [sic] denies all truthfulness of this statement."

24 This statement, followed by unsworn "testimony" by  
25

1 Richardson is clearly ineffective at creating an issue of  
 2 material fact. *S.A. Empresa de Viacao Aerea Rio Grandense v.*  
 3 *Walter Kidde & Co., Inc.*, 690 F. 2d 1235, 1238 (9<sup>th</sup> Cir. 1982)  
 4 Undisputed Fact No. 10

5 "When PEN licensed the tracks, it did not do so under the  
 6 titles arbitrarily assigned by Richardson."

7 Defendant's Reply to Plaintiffs' Response

8 "Plaintiff [sic] denies all truthfulness of this statement."

9 The ensuing discourse on what Jeeve "admitted" is  
 10 inadmissible hearsay because it is submitted to prove the truth  
 11 of what a third party said in an out of court statement and Jeeve  
 12 is not a party to this action. FRE 801(c).

13 Undisputed Fact No. 11

14 "Richardson refused to provide CBS an exact copy of what he  
 15 deposited with the Copyright Office, instead providing a compact  
 16 disc which he said he created after he was asked to produce the  
 17 'deposit copy' in discovery in this case."

18 Defendant's Reply to Plaintiffs' Response

19 "Plaintiff [sic] denies all truthfulness of this statement."

20 Once again, this statement is followed by unsworn testimony,  
 21 none of which is contained in Richardson's Declaration. *S.A.*  
 22 *Empresa de Viacao Aerea Rio Grandense v. Walter Kidde & Co.,*  
 23 *Inc.*, 690 F. 2d 1235, 1238 (9<sup>th</sup> Cir. 1982) The pages and lines  
 24 from his deposition do not say what he says they do.

1 Undisputed Fact No. 12

2 "Richardson admitted that the deposit copies he filed did  
3 not contain any identification by title of the 11 individual  
4 tracks that were supposedly included in the "Del Funk Boy Music  
5 and Paperwork Production tracks library."

6 Defendant's Reply to Plaintiffs' Response

7 This is non-responsive and does not address the substance of  
8 the undisputed fact. Further, it ignores Mr. Richardson's  
9 express admission at page 21 of his deposition that he did not  
10 assign any titles to the works.

11 Undisputed Fact No. 13

12 "None of the copyrights were registered until years after  
13 the alleged infringement in 2003."

14 Defendant's Reply to Plaintiffs' Response

15 Plaintiffs claim to dispute this fact but offer only  
16 argument about the statute of limitations, an issue which  
17 Defendant has not raised. Plaintiffs have failed to assert any  
18 facts or evidence that would dispute this fact.

19 Undisputed Fact No. 14

20 "Plaintiffs do not have any admissible proof that they  
21 suffered any loss because of the alleged infringements."

22 Defendant's Reply to Plaintiffs' Response

23 Plaintiffs dispute this and state that they "have proof  
24 Defendant falsified cue sheets and Defendant is benefitting from  
25

1 the falsified cue sheet [sic]." Such proof is not only non-  
2 existent, it does not relate to losses that Plaintiffs might have  
3 suffered if in fact infringement occurred.

4 Undisputed Fact No. 15

5 "Plaintiffs have no proof of a causal connection between the  
6 use of small portions of instrumental, incidental music and any  
7 profits made by CBS on any particular episode of ANTM, or on all  
8 of the episodes."

9 Defendant's Reply to Plaintiffs' Response

10 Plaintiffs dispute this fact with citations to articles and  
11 a receipt from Best Buy which are inadmissible hearsay. Further,  
12 the articles are talking about generalities and are therefore  
13 irrelevant to this undisputed fact. Plaintiffs are required to  
14 show Defendants' profits in order to recover these kind of  
15 damages, but they have offered no such evidence. Plaintiffs have  
16 failed to assert any facts or evidence that would dispute this  
17 fact.

18 Undisputed Fact No. 16

19 "As to the Snyder Works, there is no dispute that what was  
20 licensed was the instrumental version of the two works that Jeeve  
21 created before the Snyder Works were produced."

22 Defendant's Reply to Plaintiffs' Response

23 The response is unsworn testimony. Plaintiffs supporting  
24 evidence consists of unauthenticated documents attached to the  
25



1 Declaration of Delray Richardson. No evidence is offered that  
2 anything but the instrumental version was licensed.

3 Undisputed Fact No. 17

4 "The alleged infringements of 'Love You So' and 'I Don't  
5 Care' occurred in Episode 1, 5 and 9 of Season of the show, the  
6 latest of which (Episode 9) was first broadcast on July 8, 2003."

7 Defendant's Reply to Plaintiffs' Response

8 Plaintiffs' response is completely non-responsive and  
9 Plaintiffs have offered no evidence to dispute this undisputed  
10 fact which establishes that Plaintiffs have no legal right to  
11 statutory damages.

12 Undisputed Fact No. 18

13 "The alleged infringements of the two Snyder Works first  
14 occurred in Episode 11 of Season 2, broadcast in 2004 and Episode  
15 7 of Season 8, broadcast in 2007."

16 Defendant's Reply to Plaintiffs' Response

17 Again, "Plaintiff [sic] denies all truthfulness of this  
18 statement" without facts or other evidence, only unsworn  
19 testimony/legal argument. Plaintiffs' response does not alter  
20 the fact that Plaintiffs are not entitled to statutory damages  
21 because the alleged infringements occurred years before the  
22 purported copyright was obtained. Plaintiffs have failed to  
23 assert any facts or evidence that would dispute this fact.

1 DEFENDANT'S REPLY TO  
2 PLAINTIFF'S "SEPARATE STATEMENT OF UNDISPUTED  
3 FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT"  
4 Undisputed Facts No. 1 through 8

5 "The Musical Work 'Love You So' (Original Version) is  
6 performed in episode 109 from 32:14 until 33:37 but is not  
7 covered by any license or Schedule "A" authorizing its use by the  
8 Defendant or its affiliates."

9 The remaining Fact Nos. 2 through 8 are identical except  
10 referring to different songs and playing times.

11 Defendant's Response and Objections to Supporting Evidence

12 Plaintiffs have no admissible evidence to support these  
13 statements, relying on the same Paragraph 20 of the Declaration  
14 of Delray Richardson and the same items they rely upon in  
15 "disputing" Defendant's Undisputed Facts.

16 Exhibit 16 was "provided by Defendants" in full and not with  
17 missing pages as attached to the Richardson Decl. FRE 106.  
18 Declaration of Robert S. Besser, ¶ 9.

19 It does not appear that Plaintiffs have provided the Court  
20 with a copy of "CBS Cycle 1 DVD of America's Next Top Model" and  
21 even if they have, the Court is not required to view hours of  
22 video to confirm Plaintiffs' assertion.

1 Undisputed Fact No. 9

2 "Jean-Jean [sic] Ducornet and Pen Music, Inc are being  
3 allowed to collect fraudulent fees and royalties from ASCAP based  
4 on falsified cue sheets prepared by the Defendant's employee  
5 music operations manager Donald Steever."

6 Defendant's Response and Objections

7 This "fact" is nothing more than an allegation based  
8 entirely on inadmissible hearsay (what Jeeve might have said to  
9 Richardson). In addition, neither Jean-Yves Ducornet nor Pen  
10 Music, Inc. are parties to this action.

11 Undisputed Fact Nos. 10 and 11

12 No. 10: "July 17<sup>th</sup> 2011 @ 5:12 a.m. Jean-Yves Ducornet  
13 admits to Delray Richardson and Pen Music, Inc that 'cue sheet  
14 109 list [sic] more songs than were used' and 'This issue is  
15 beyond his control.'"

16 No. 11: "Jean-Yves Ducornet conceded that 'Someone at UPN  
17 is to blame for this huge mistake, not me' and hundreds of other  
18 writer's would've also gotten paid by mistake, or not paid at all  
19 when they should have' and 'There's no way to know what happen  
20 [sic] right now until one of us walks into the CBS office with  
21 the DVD and the Cue Sheet. It's that simple.'"

22 Defendant's Response and Objections

23 Again, the evidentiary support for these statements is  
24 entirely inadmissible hearsay under FRE 801(c).

1 Undisputed Fact No. 12

2 "CBS has given artist songwriting credits that actually  
3 belong to other artists based on their falsified cue sheets  
4 prepared by the Defendant's employee music operations Donald  
5 Steever."

6 Defendant's Response and Objections

7 This statement is based on inadmissible hearsay, contains  
8 legal contentions and is pure speculation.

9 Respectfully submitted,  
10 Dated: September 16, 2013

11 LAW OFFICES OF ROBERT S. BESSER

12 By: /s/ Robert S. Besser  
13 ROBERT S. BESSER  
14 Attorneys for Defendant  
15 CBS STUDIOS INC.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA:

COUNTY OF LOS ANGELES:

I am a member of the Bar of the State of California. I am over the age of 18 and not a party to the within action. My business address is 1221 Second Street, Suite 300, Santa Monica, California 90401.

On this date, I served the foregoing document described as REPLY TO PLAINTIFFS' RESPONSE TO DEFENDANT'S UNDISPUTED MATERIAL FACTS -and- SEPARATE STATEMENT OF UNDISPUTED FACTS IN OPPOSITION MOTION FOR SUMMARY JUDGMENT on all interested parties in this action by:

[XX] BY MAIL: placing a true and correct copy thereof enclosed in a sealed envelope with postage fully pre-paid and addressed as follows:

Delray Richardson, In Pro Per  
Sterling A. Snyder, In Pro Per  
2191 East 21<sup>st</sup> Street Box K  
Signal Hill, CA 90755

I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit stated in this affidavit.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed on September 16, 2013, at San Rafael, California.

/s/ Christopher Chapin  
CHRISTOPHER CHAPIN